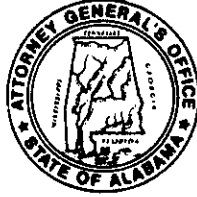


OFFICE OF THE ATTORNEY GENERAL

81-00336



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APR 17 1981

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Pardon and Parole Board - Paroles -
Revocation of Parole

Board of Pardons and Paroles may
reconsider and revoke parole granted
upon a determination of Board's
failure to adequately consider
all facts.

Dear Mr. Williams:

The Attorney General's Office is in receipt of your
request for an opinion dated April 16, 1981, in which you
pose the following question:

"Does the Board of Pardons and
Paroles have the power and authority
to rescind, revoke, nullify, or
otherwise withdraw and make null
and void a grant of parole which
has been legally issued and executed
of a detainer warrant from another
jurisdiction but prior to actual
release of the prisoner from prison
custody of the community."

It is my opinion that upon determination by the Board
that the mandates of §15-22-25 and §15-22-31, Code of Alabama
1975, have not been followed, the Board is vested with the
power to reconsider the parole of a parolee.

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Section 15-22-25, Code of Alabama 1975, charges the Board with the responsibility of fully and completely investigating the potential parolee's social, physical, mental and psychiatric condition and history. This Section also charges the Board with the responsibility of determining the full and complete circumstance of the crime for which the individual is imprisoned. Subsection (b) of this Section specifically provides that the Board shall not act on any application or case until a complete investigation of the prisoner's social and criminal record has been made by a parole officer and a written report thereof made a part of the prisoner's file. It is my opinion that in this particular case the requirements of §15-22-25(b) have not been met and that the Board has failed to ascertain fully and completely the nature of the crime committed by this person and has additionally failed to consider fully and completely this person's past criminal record, including the fact that this person has escaped from custody on two prior occasions.

Section 15-22-31, Code of Alabama 1975, mandates in subsection (a):

"If the parole officer having charge of a paroled prisoner or any member of the Board of Pardons and Paroles shall have reasonable cause to believe that such person has lapsed, or is probably about to lapse, into criminal ways or company or has violated the conditions of his parole in an important respect, such officer or Board member shall report such fact to the Board of Corrections which shall thereupon issue a warrant for the retaking of such person in his return to the prison designated."

Should the Board determine that it has failed to adequately consider the probability of lapse in this individual's case, then it is therefore my opinion that the Board may reconsider the parole granted to this person and order the return of this person to the Alabama Prison System. It is further my opinion that the Board has in fact failed to adequately consider the possibility of this person's lapse. During an escape in 1977, this individual declared to a fellow


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escapee that the surviving victim of one of his crimes appeared to be indestructible, however, her children were not. During the period of this person's escape, law enforcement officers in this State traced this individual to the vicinity of the surviving victim and every indication was that this individual was stalking the surviving victim and her family in an effort to do them harm.

It is my opinion that the Board of Pardons and Paroles has failed to carry out the responsibility mandated to the Board in §15-22-25 and §15-22-31. It is my opinion that the Board should take immediate steps to reconsider and revoke the parole granted to Richard Mark Ellard in light of the abject failure of the Board to consider the crimes of this individual. In order to carry out the responsibilities charged to the Board in the Code of Alabama, they must take that action immediately.

In order to accomplish the reconsideration or revocation of parole, it is further my opinion that the Board should follow the due process mandates outlines in Morrissey v. Brewer, 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972).

Sincerely yours,


CHARLES A. GRADDICK
ATTORNEY GENERAL

CAG/RNM/mr